LIBRARY
SUPREME COURT, U.S.

Office - Supreme Court, U. S.
FILED
APR 23 1954
PAUL P. WILLEY, Clerk

# Supreme Court of the United States

**OCTOBER TERM, 1953.**

---

**No. [redacted]50**

---

**THE BISSO NO. 9**

**WILLIAM A. BISSO, JR., RECEIVER, NEW ORLEANS COAL AND BISSO TOWBOAT CO.**
**Petitioner-Appellant Below**

**versus**

**INLAND WATERWAYS CORPORATION**
**Respondent-Appellee Below**

---

## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

---

EBERHARD P. DEUTSCH
Proctor for Petitioner

DEUTSCH, KERRIGAN & STILES

RENÉ H. HIMEL, JR.

FRANCIS EMMETT

Of Counsel

## SUBJECT INDEX


| | PAGE |
|---|---|
| I—QUESTION PRESENTED | 2 |
| II—JURISDICTION AND OPINIONS BELOW | 3 |
| III—STATEMENT OF THE MATTER INVOLVED | 3 |
| IV—REASONS RELIED ON FOR ALLOWANCE OF THE WRIT | 5 |
| V—CONCLUSION | 14 |
| VI—APPENDIX | 16 |


## LIST OF AUTHORITIES

Cases:


| | |
|---|---|
| Alaska Commercial Co. vs Williams, 138 Fed. 362 (CA 9-1904) | 5 |
| Calzavaro vs Planet Steamship Corp., 31 F2d 885, 1929 AMC 561 (CA 4) | 11 |
| Cornell Steamboat Co. vs United States, 321 US 634 (1944) | 13 |
| Deems vs Albany & Canal Line, 14 Blatchf. 474, FC No. 3736 (SD NY-1878) | 5 |
| Great Lakes Towing Co. vs Bethlehem Transp. Co., 65 F2d 543, 1933 AMC 1117 (CA 6) | 11 |
| Hall-Scott Motor Car Co. vs Universal Ins. Co., 122 F2d 531 (CA 9-1941), cert. den., 314 US 691 | 10 |
| John J. Feeney, The, 3 FS 270 (ED NY-1933) | 10 |
| M. J. Cummings, The, 18 Fed. 178 (ND NY-1883) | 5 |
| Monk vs Cornell Steamboat Co., 198 Fed. 472 (CA 2-1912) | 6 |

## LIST OF AUTHORITIES—(Continued)


| | PAGE |
|---|---|
| Moran, In re, 120 Fed. 556 (ED NY-1903) .... | 5 |
| Mylroie vs British Columbia Mills Tug & Barge Co., 268 Fed. 449 (CA 9-1920), aff'd, 259 US 1 ..... | 5, 6 |
| Oceanica, The, 170 Fed. 893 (CA 2-1909), cert. den., 215 US 599 ..... | 6, 7, 13 |
| Petterson Lighterage & Towing Corp. vs Tug J. R. Russell, 87 FS 467, 1949 AMC 1836 (SD NY) ..... | 9, 11 |
| Primrose, The, 3 FS 267, 1933 AMC 586 (ED NY) ..... | 10 |
| Sea Lion, The, 12 F2d 124, 1926 AMC 265 (ND Cal.) ..... | 6 |
| Sternberg Dredging Co. vs Moran Towing & Transportation Co., 196 F2d 1002, 1952 AMC 1118, on rehearing, 200 F2d 603, 1953 AMC 181 (CA 2) ..... | 13 |
| Stevens vs The White City, 285 US 195 (1932).. | 12, 13 |
| Sun Oil Co. vs Dalzell Towing Co., 287 US 291 (1932) ..... | 7, 9, 10, 12 |
| Sun Oil Co. vs Dalzell Towing Co., 55 F2d 63, 1932 AMC 149 (CA 2) ..... .. | 9 |
| Syracuse, The, 12 Wall. (79 US) 167 (1870).... | 5 |
| Ten Eyck vs Director General of Railroads, 267 Fed. 974 (CA 2-1920) ..... | 6 |
| Turecamo Towing Corporation vs United States, 125 F2d 1001, 1942 AMC 254 (CA 2) .... | 13 |
| Ulrich vs The Sunbeam, 1 NY Law J. 141, FC No. 14329 (DC NJ-1878) ..... | 5 |
| Wash Gray, The (Compania Navegacion Interior vs Fireman's Fund Insurance Co.), 277 US 66 (1928) ..... | 7 |

PAGE

West Eldara, The, 101 F2d 45, 1939 AMC 65, mod., 104 F2d 670, 1939 AMC 877 (CA 2), cert. den., 308 US 607 ..... 9

Statute:

Transportation Act of 1940, 19 USC 901 *et seq.* 13

Miscellaneous:

Cornell Law Quarterly, vol. 26, p. 303, note (1941) ..... 13

Cornell Law Quarterly, vol. 28, p. 194, note (1943) ..... 7, 12

Durant, Pictorial History of American Ships (1953) ..... 12

Robinson, Handbook of Admiralty Law (1939).. 7, 13

Rosskam, Towboat River (1948) ..... 12

**SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM, 1953**

---

**No.**

---

**THE BISSO NO. 9**

**WILLIAM A. BISSO, JR., RECEIVER, NEW ORLEANS COAL AND BISSO TOWBOAT CO.**
**Petitioner-Appellant Below**

**versus**

**INLAND WATERWAYS CORPORATION**
**Respondent-Appellee Below**

---

# PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioner seeks issuance of a writ of certiorari to review the judgment of the Court of Appeals for the Fifth Circuit herein; and in support of its petition respectfully shows:

## I

## QUESTION PRESENTED

The important controversial question of law presented for determination in this case is:

> May a tug contract against liability for her own negligent towage; and, if so, may the standard "release towage" and "modified pilotage" clauses, in current use in towage contracts generally, properly be construed as stipulations against the tug's own negligence?

The primary question of the right of tugs to contract against their own negligence at all, is hopelessly confused. The Fifth Circuit, in the decision under review, has held squarely that they may. The Ninth Circuit has held squarely that they may not. Decisions within the Second Circuit are in conflict.

This court has rendered three decisions on the subject. Failure of these decisions definitively to resolve the question at issue is demonstrated by inter- and intra-circuit conflicts in opinions all purporting to follow and apply decisions of this court.*

The related question of adequacy of the "release towage" and "modified pilotage" clauses—standard in towage contracts throughout the nation—as stipulations against the tug's own negligence, is at least equally unsettled.

---

* "This case graphically portrays the quandary in which the marine industry, as it relates to towing contracts, finds itself because of two decisions of the Supreme Court." Opinion of the district court in this case, R 35, 114 FS 713, 714.

The decision below as to sufficiency of the "release towage" clause is directly contrary to two decisions by this court. The decision below as to the effect of the "modified pilotage" clause is, as an effort to extend and apply a third decision by this court, in further conflict with decisions by the Fourth and Sixth Circuits.

Authoritative and definitive resolution of the entire question is of the greatest moment to the entire towage industry, both deep sea and inland, as well as to all businesses affected thereby.

## II

## JURISDICTION and OPINIONS BELOW

Jurisdiction of this court lies under 28 USC 1254.

The opinion of the district court was rendered on September 1, 1953, and is reported at 114 FS 713, 1953 AMC 1664. The opinion of the court of appeals was rendered on March 26, 1954, and has not yet been reported.

## III

## STATEMENT OF THE MATTER INVOLVED

Petitioner, owner of the Barge BISSO NO. 9, brought this action to recover for loss of the barge while in tow by respondent, an agency of the United States Government.

The towage contract contained the standard "release towage" and "modified pilotage" clauses, providing respectively:

> "The movement contemplated will be done at the sole risk of the 'craft to be towed' and its cargo, and neither the (tow) boats and/or any other equipment used in said (towage) service nor the owner, charterer or hirer thereof shall be liable for any loss or damage to the 'craft to be towed' or its cargo nor for any damage done by the 'craft to be towed', however occurring.
>
> "The master and crews and employees of all (tow) boats and/or other equipment assisting the 'craft to be towed', shall, in the performance of said service, become and be the servants of the 'craft to be towed', regardless of whether the 'craft to be towed' assists in the service in any way, and irrespective of whether they be aboard the 'craft to be towed' or in command thereof."

While the unmanned and unpowered BISSO NO. 9 was in tow of respondent's Towboat CAIRO, the barge was brought into collision with a bridge pier and was lost through the towboat's negligence.

The district court held that this negligence was the cause of the loss; that the "release towage" clause did not relieve respondent from liability for its negligence; but that the "modified pilotage" clause had that effect. The action was accordingly dismissed.

Affirming, the court of appeals held that "not merely one, as found by the district judge, but both of the

clauses relied on are valid and effective to release the appellee from liability".

## IV

## REASONS RELIED ON FOR ALLOWANCE OF THE WRIT

The present uncertainty as to the validity and effect of contractual stipulations by towers against liability for negligence, stems from three decisions by this court.

In 1870, in *The Syracuse*, this court held that a towing steamer is liable for loss sustained by her tow "through the negligence of those in charge of" the steamboat, even though, "by special agreement", the tow "was being towed at her own risk", because "although the policy of the law has not imposed on the towing boat the obligation resting on the common carrier, it does require on the part of the persons engaged in her management, the exercise of reasonable care, caution and maritime skill".[1]

From 1870 to 1909, this holding was followed in a number of decisions, none ever suggesting that it meant anything other than that a provision in a towage contract that the operation was to be at the risk of the tow, did not, or could not validly, exonerate the tug from liability for her own negligence.[2]

---

[1] 12 Wall. (79 US) 167, 171 (1870).

[2] Thus, in *Alaska Commercial Co. vs Williams*, 138 Fed. 362, 366 (CA 9-1904), the Ninth Circuit, citing *The Syracuse*, held, as later stated by the same court in *Mylroie vs British Columbia Mills Tug & Barge Co.*, 268 Fed. 449, 451 (CA 9-1920), aff'd, 259 US 1, that a tug is "not allowed by law to avoid by contract the consequences of its own negligence". See also, *e. g., Deems vs Albany & Canal Line*, FS No. 3736 (SD NY-1878); *Ulrich vs The Sunbeam*, FC No. 14329 (DC NJ-1878); *The M. J. Cummings*, 18 Fed. 178 (ND NY-1883); *In re Moran*, 120 Fed. 556 (ED NY-1903).

But in 1909, in *The Oceanica*,[3] the Second Circuit concluded that *The Syracuse* need no longer be followed. The court held that, a tug not being a common carrier in relation to her tow, and accordingly "being only liable for negligence, if the tow agrees to assume all risks, no risks can be meant except those for which the tug is liable, viz., the consequences of her own negligence".

Judge Coxe dissented, and on rehearing, Judge Ward wrote: "We do appreciate keenly that the decision of the majority of the court as to the right of a tug to contract against her own negligence is a departure from previous decisions. The question should, and we hope will, be set at rest in this case by the Supreme Court." But certiorari was denied.[4]

In 1920, the Ninth Circuit decided *Mylroie vs British Columbia Mills Tug & Barge Co.*, which involved a towage contract providing that "the tug company is not to be held liable for any damage which might happen to the said barge Bangor or its cargo while in tow or at anchor". The court expressly refused to follow the holding of the Second Circuit in *The Oceanica;* and stated that it felt itself bound by this court's opinion in *The Syracuse* to hold not only that this clause did not operate to relieve the tug of liability for damage caused by her own negligence, but that a tug may not validly contract against such liability.[5]

---

[3] 170 Fed. 893 (CA 2-1909).

[4] 215 US 599. The Second Circuit subsequently twice reiterated the holding of *The Oceanica*. See *Monk vs Cornell Steamboat Co.*, 198 Fed. 472 (CA 2-1912); *Ten Eyck vs Director General of Railroads*, 267 Fed. 974 (CA 2-1920).

[5] 268 Fed. 449 (CA 9-1920), aff'd, 259 US 1. Certiorari was granted in this case, and the decision affirmed, but this court found "it unnecessary . . . to consider the contention on behalf of the barge that the exemption clause is void". 259 US at p. 12. See also *The Sea Lion*, 12 F2d 124 (ND Calif.-1926).

In 1928, in *The Wash Gray*, this court apparently resolved the conflict, citing *The Syracuse* as still representing the "state of the law", and holding that a clause in a towage contract to the effect that the towing vessel was not to be "responsible in any way for loss or damage to" her tow, "did not release" the towing vessel from loss thereof, or damage thereto, if caused by "the negligence of the master or crew of the towing vessel".[6]

Whether *The Wash Gray* decided that the "release towage" clause is invalid, or, as argued by respondent and held by the district court below, only that it is insufficient as a stipulation against liability for negligence, the instant holding of the court of appeals, giving effect to the "release towage" clause as against the tower's own negligence, is in specific conflict with the cited decision of this court.

Confusion was compounded rather than composed by this court's third pertinent opinion, rendered in *Sun Oil Company vs Dalzell Towing Company*,[7] four years after decision of *The Wash Gray*.

In the *Sun Oil* case a tanker was stranded and damaged while being docked under her own power and using her own steering mechanism, with her own master and crew at their stations, being assisted in the maneuver by tugs, the captain of one of which was on the bridge of the tanker acting as her pilot. The casualty resulted

---

[6] 277 US 66, 73 (1928). The opinion of the Second Circuit in *The Oceanica* was cited to this court (277 US at p. 70) but was not mentioned by it in its opinion. See Robinson, *Handbook of Admiralty Law* (1939); *Note*, 28 Cornell Law Quarterly 194, 195 (1943).

[7] 287 US 291 (1932).

from the negligence of the tug captain aboard the tanker, not from the negligence of either tug.

The docking maneuver was being performed under an agreement which contained the following pilotage clause:

> "When the captain of any tug furnished to or engaged in the service of assisting a vessel which is making use of her own propelling power goes on board said vessel, it is understood and agreed that said tugboat captain or licensed pilot becomes the servant of the owners of the vessel assisted in respect to the giving of orders to any of the tugs furnished to or engaged in the assisting service and in respect to the handling of such vessel, and neither those furnishing the tugs and/or pilot nor the tugs, their owners, agents or charterers shall be liable for any damage resulting therefrom."

This court enforced the clause in the situation presented, as "an application of the well-established rule that when one puts his employee at the disposal and under the direction of another for the performance of service for the latter, such employee while so engaged acts directly for, and is to be deemed the employee of, the latter and not the former".[8]

The Second Circuit had stated, in its opinion in the same case, that "a distinction may well be taken between a towage contract as such and a pilotage contract", and had stressed the difference between a situation in which "the 'assisted vessel' is under her own power and the

[8] *Id.*, at pp. 294-95.

towing company merely supplies a tug master as a pilot", and that in which "a tug owner is engaged in towing a dead vessel".[9]

This court also called particular attention to the fact that "the services covered by the contract were less than towage"; that the towing company did not undertake "to do more than to furnish tugs to assist" the vessel "while using her own propelling power . . . and steering apparatus"; and that at no time did the towing company have "control of the tanker", but, on the contrary, "her master, officers and crew were at their stations".[10]

The presence of the master at his station in pilotage cases is not merely figurative or symbolic. The fact that there is a pilot on the bridge does not alter the master's ultimate command of his vessel. As pointed out by the Second Circuit, "the master need not have allowed the pilot to conduct the navigation unless he was satisfied to trust it to him, and if dissatisfied he could have removed him".[11]

The validity of the pilotage clause would thus seem based primarily on the presence of the master of an assisted vessel at his station in command of his ship, proceeding under her own power, with authority to direct and even to remove the pilot.[12]

In the instant case, the district court quoted from the opinion of this court in the *Sun Oil* case, the statement

---

[9] 55 F2d 63, 65 (CA 2-1932).
[10] 287 US at pp. 294-5.
[11] *The West Eldara*, 101 F2d 45, 47, mod., 104 F2d 670 (CA 2-1939), cert. den., 308 US 607.
[12] *Cf. Petterson Lighterage & Towing Corp. vs Tug J. R. Russell*, 87 FS 467 (SD NY-1949).

that "there is no foundation in this case for the application of the doctrine that common carriers and others under like duty to serve the public according to their capacity and the terms of their undertaking cannot by any form of agreement secure exemption from liability for loss or damage caused by their own negligence."[13]

But this language must be read in the setting of the facts of that case, involving a vessel commanded by her own master, navigated under her own power by her own officers and crew, and simply being assisted by tugs; and, as discussed hereunder, should not be applied to a helpless barge under the complete domination and absolute control of her tug.

The only reference made by this court, in the *Sun Oil* case, to its *Syracuse* and *Wash Gray* opinions, was the somewhat equivocal statement that "the decree under consideration is not in conflict with the decisions of this court cited by petitioner. . . . Neither involved an agreement similar to the provisions of the pilotage clause on which this case turns."[14]

The Eastern District of New York has, as did the district court and presumably the court of appeals below, construed the *Sun Oil* decision as validating all contracts relieving tugs from liability for their own negligence.[15] The Ninth Circuit has rejected this interpretation,[16] as

[13] R 38, 114 FS 713, 715, quoting from 287 US at p. 294.
[14] 287 US at p. 295.
[15] *The John J. Feeney*, 3 FS 270 (ED NY-1933); *The Primrose*, 3 FS 267 (ED NY-1933).
[16] *Hall-Scott Motor Car Co. vs Universal Ins. Co.*, 122 F2d 531, 535-36 (CA 9-1941), cert. den., 314 US 691.



has the Southern District of New York, holding that the *Sun Oil* opinion was not intended to upset the long-standing proscription of towers'-release clauses, but only to establish a special rule for the "special case . . . when the tow is under power and in control of the tower's [tow's?] servants."[17]

The Sixth Circuit, citing the *Sun Oil* case decided only a few months earlier, has held that, even in the case of a harbor maneuver under a steamer's own power and steerage, with her master in command, an assisting towing company whose tug captain was guilty of negligence was not relieved of liability by the pilotage clause, when he had acted on "his own initiative, without subordination to" the master of the steamer.[18]

Somewhat similarly, it had been held by the Fourth Circuit that a pilotage clause in such a contract was ineffective to relieve a tower of liability for negligence of its tug captain, when it was shown "that the tugs were engaged to assist her to get out", and that the vessel's "own propelling power had not been used at the time the accident occurred".[19]

The decision below conflicts with these holdings at least in its extension of the *Sun Oil* doctrine as justifying application of the "modified pilotage" clause to towage of a dead, dumb barge completely at the mercy of her tug; and, it is submitted, tears more fundamentally

[17] *Petterson Lighterage & Towing Corp. vs Tug J. R. Russell*, 87 FS 467, 470 (SD NY-1949).
[18] *Great Lakes Towing Co. vs Bethlehem Transp. Co.*, 65 F2d 543, 544 (CA 6-1933).
[19] *Calzavaro vs Planet Steamship Corp.*, 31 F2d 885, 889 (CA 4-1929).

at the fabric of principle woven by this court itself in its *Syracuse*, *Wash Gray* and *Sun Oil* opinions.

Those opinions, read together, seem, and as noted above, have been construed by the Ninth Circuit and the Southern District of New York, to hold that an assisting tug may stipulate against liability for the negligence of her master while aboard, and subject to the authority of the master of, the assisted vessel which is proceeding under her own power; but that a tug may not, by contract, limit her liability for negligent damage to an unmanned, unpowered tow, entirely under the control of the tug.

Read in the light most favorable to respondent, the cited decisions hold the "release towage" clause insufficient to relieve a tug from her own negligence; and stop studiedly short of upholding applicability of the "pilotage" clause to dumb towage.[20]

There are clear fundamental relational differences between mere assistance by tugs in docking a self-propelled vessel operating under her own power and command; and towage of large fleets of unmanned cargo barges belonging to different owners.[21]

In its opinion in this case, the court of appeals cited *Stevens vs The White City*, in which this court held that, for certain purposes unrelated to attempted contractual ex-

[20] "If it be intimated that *Sun Oil Company vs Dalzell Towing Company, Inc.*, may have modified the other two cases (*The Syracuse* and *The Wash Gray*), it is submitted, however, that the last case stands alone on its peculiar facts." *Note*, 28 Cornell Law Quarterly 194, 195 (1943).

[21] Cargo barge fleets have consisted of as many as "forty and fifty barges at a time". Rosskam, *Towboat River* (1948) 18, 59. See also Durant, *Pictorial History of American Ships* (1953) 282. The fleet involved in the tow in the case at bar consisted of eight unmanned cargo barges belonging to different owners. R 29.



oneration from liability, a tug was not to be considered the bailee of a single, normally self-propelled vessel in tow manned by her owner's representative during at least part of the towage service.[22]

Recent cuttings at the base of *Stevens vs The White City*, insofar as applicable to towage of unmanned vessels,[23] were seized on by respondent in support of its argument below, as paraphrased by the court of appeals, that "the situation of a tug with a dumb tow makes it more necessary for it to relieve itself of what may approach an insurer's liability".

Modern towage creates a bailment relation affected in large measure with the public interest.[24] *Stevens vs The White City* by no means decrees that the reasons prohibiting a bailee from contracting against liability for his own negligence may not be applied today with equal force to towage of a fleet of unmanned barges.[25]

[22] 285 US 195 (1932). Judge Clark of the Second Circuit has suggested that "the pains the (this) Court takes (in the *Stevens* opinion) to emphasize the lack of surrender of control in the ordinary towage contract" implies non-applicability of the rule of that decision in cases of towage involving cession to the tug of complete control of an unmanned tow. *Turecamo Towing Corporation vs United States*, 125 F2d 1001, 1002 (CA 2-1942). See also Robinson, *Handbook of Admiralty Law* (1939) 666.

[23] As in *Sternberg Dredging Co. vs Moran Towing & Transportation Co.*, 196 F2d 1002, especially on rehearing, 200 F2d 603 (CA 2-1953).

[24] Since the *Stevens* decision, Congress has come to the conclusion, in the Transportation Act of 1940, that the reasons justifying governmental regulation of common carriers generally, are equally relevant to towage. 49 USC 901 et seq. See *Cornell Steamboat Co. vs United States*, 321 US 634 (1944).

[25] "The design is to prevent those who have the absolute control of another's property from extorting an agreement that they may neglect all reasonable precautions to preserve it." Coxe, Cct. J., dissenting in *The Oceanica*, 170 Fed. 893, 896 (CA 2-1909), cert. den., 215 US 559. See *Note*, 26 Cornell Law Quarterly 303 (1941). The motion of *amici curiae* in the court of appeals (reprinted in the *Appendix* hereto) itself demonstrates that the practice among towers of inserting "release towage" and "modified pilotage" clauses in their towage contracts, is extremely widespread if not universal.

## V

## CONCLUSION

In the present posture of the law, the same standard provision of the same towage contract covering widespread operations may be enforced or repudiated depending on the court in which the action involving it is brought.

The Ninth Circuit and the Southern District of New York reject all efforts by towers contractually to avoid liability for their own negligence. The Fifth Circuit and the Eastern District of New York, on the other hand, recognize the validity of such contractual stipulations. Despite two decisions of this court directly to the contrary, the Fifth Circuit has endorsed the effectiveness of the "release towage" clause to accomplish this purpose.

The Fourth and Sixth Circuits have refused to enforce the "pilotage" clause in situations more closely resembling towage than pilotage. The Fifth Circuit, on the contrary, has held the "pilotage" clause applicable to towage.

All three major facets of the over-all problem at issue—whether a tug may stipulate at all against liability for damage by her own negligence to her unmanned tow; whether the standard "release towage" clause is adequate to this end; and whether the "modified pilotage" clause is either valid or applicable in a towage situation—are present and may be decided squarely in this case.

It is respectfully submitted that these considerations warrant allowance of the writ which petitioner seeks.

EBERHARD P. DEUTSCH
Proctor for Petitioner

DEUTSCH, KERRIGAN & STILES
RENÉ H. HIMEL, JR.
FRANCIS EMMETT
Of Counsel

April, 1954.

## VI

## APPENDIX

---

*MOTION FOR LEAVE TO FILE BRIEF AS AMICI CURIAE*

(in the Court of Appeals)

Now come Selim B. Lemle, Charles Kohlmeyer, Jr., and George B. Matthews and show that they are counsel for American Barge Lines, Inc., Coyle Lines Incorporated, Crescent Towing & Salvage Co., Inc., Dixie Carriers, Inc., John I. Hay Company, Mississippi Valley Barge Line Company, Mobile Towing & Wrecking Co., and Union Barge Line Corporation; that Crescent Towing & Salvage Co., Inc. and Mobile Towing & Wrecking Co., Inc. are the owners and operators of large fleets of harbor tugs in New Orleans and Mobile respectively; and that all of the other parties are owners and operators of fleets of river towboats and barges plying the Mississippi River and its tributaries and the Intracoastal Canal.

Movers show that the parties all perform towing services for each other and the public at large under towage contracts containing provisions for the release from liability of towing craft for its negligence substantially similar to the release clause, the validity of which has been attacked in the instant case; that the interpretation placed on the release clause will have a material effect upon the methods of doing business of all the parties whom movers represent; and accordingly movers pray for leave to file the attached brief as Amici Curiae in support of the position of Appellee.